IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)
	) Group Art Unit: 2464
Edward James NORRIS	)
	)
Application No.: 10/645,388	) Examiner: Patel, Chandrahas B.
	)
Filed: August 21, 2003	)
	) Confirmation No.: 8100
For: SYSTEMS AND METHODS FOR	)
WIRELESS ACCESS POINT	)
DETECTION	)

Attention: Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPEAL BRIEF UNDER BOARD RULE § 41.37

In support of the Notice of Appeal filed March 2, 2010, and further to 37 C.F.R.

41.37(a)(1), Appellants present this brief and enclose herewith a check for the fee of

$540.00 required under 37 C.F.R. 41.20(b)(2).

This Appeal responds to the final rejection of claims 2-11, 16, 18-28, 33-43,

48-50, and 52 mailed October 5, 2009.

If any additional fees are required or if the enclosed payment is insufficient,

Appellants request that the required fees be charged to Deposit Account No. 06-0916.

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I. Real Party in Interest

The real party in interest of the present application, solely for purposes of identifying and avoiding potential conflicts of interest by board members due to working in matters in which the member has a financial interest, is Verizon Communications Inc. and its subsidiary companies, which currently include Verizon Business Global, LLC (formerly MCI, LLC) and Cellco Partnership (doing business as Verizon Wireless, and which includes as a minority partner affiliates of Vodafone Group Plc). Verizon Communications Inc. or one of its subsidiary companies is an assignee of record of the present application.

II. Related Appeals and Interferences

There are currently no other appeals or interferences, of which Appellant, Appellant's legal representative, or the assignee are aware, that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims

Claims 2-11, 16, 18-28, 33-43, 48-50, and 52 stand as rejected, and claims 1, 12-15, 17, 29-32, 44-47, and 51 have been canceled. No claim is allowed or objected to. The final rejection of claims 2-11, 16, 18-28, 33-43, 48-50, and 52 is being appealed. A list of the claims on appeal is found in the attached Claims Appendix. Furthermore, each pending claim of this patent application is separately patentable, and upon issuance of a patent will be entitled to a separate presumption of validity under 35 U.S.C. § 282.

IV. Status of Amendments

No amendment was filed subsequent to the Final Office Action mailed on

October 5, 2009.

V. Summary of Claimed Subject Matter

The following summary of the presently claimed subject matter indicates certain portions of the specification (including the drawings) that provide examples of embodiments of elements of the claimed subject matter. It is to be understood that other portions of the specification not cited herein may also provide examples of embodiments of elements of the claimed subject matter. It is also to be understood that the indicated examples are merely examples, and the scope of the claimed subject matter includes alternative embodiments and equivalents thereof. References herein to the specification are thus intended to be exemplary and not limiting.

Independent claim 2 is directed to a method for detecting a wireless access device on a network. *See*, for example, specification at paragraph 006 and Fig. 1. The method includes storing one or more organizationally unique identifiers that comprise the first three octets of one or more registered addresses. *See*, for example, specification at paragraphs 038, 051, and 052; and Fig. 1, ref. 1100. The method includes receiving from the network a packet with an address. *See*, for example, specification at paragraphs 027, 035, and 041; and Fig. 1, ref. 1100. The method includes searching the identifiers, wherein a more frequently encountered predetermined percentage of identifiers is searched first. *See*, for example, specification at paragraphs 027, 041, and 057; and Fig. 1, ref. 1100. The method also includes comparing the first three octets of the received address with the identifiers. *See*, for example, specification at paragraphs 051 and 052; and Fig. 1, ref. 1100.

The method also includes determining if the received address includes one of the stored identifiers. *See*, for example, specification at paragraphs 027 and 041; and Fig.

1, ref. 1100. The method also includes determining an operating system associated with the received address, when comparing the received address results in a match between the received address and at least one of the registered addresses. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100. The method also includes comparing the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds to the wireless access device. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100. The method further includes indicating that the received packet corresponds to the wireless access device based on the first three octets of the received address and when the determined operating system matches at least one of the stored operating systems. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100.

Independent claim 18 is directed to a system for detecting a wireless access device on a network. *See*, for example, specification at paragraph 006 and Fig. 1. The system includes a means for storing one or more organizationally unique identifiers that comprise the first three octets of one or more registered addresses. *See*, for example, specification at paragraphs 038, 051, and 052; and Fig. 1, ref. 1100. The system includes a means for receiving from the network a packet with an address. *See*, for example, specification at paragraphs 027, 035, and 041; and Fig. 1, ref. 1100. The system includes a means for searching the identifiers, wherein a more frequently encountered predetermined percentage of identifiers is searched first. *See*, for example, specification at paragraphs 027, 041, and 057; and Fig. 1, ref. 1100. The system also includes a means for comparing the first three octets of the received

address with the identifiers. *See*, for example, specification at paragraphs 051 and 052; and Fig. 1, ref. 1100.

The system also includes a means for determining if the received address includes one of the stored identifiers. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100. The system also includes a means for determining an operating system associated with the received address, when comparing the received address results in a match between the received address and at least one of the registered addresses. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100. The system also includes a means for comparing the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds to the wireless access device. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100. The system further includes a means for indicating that the received packet corresponds to the wireless access device based on the first three octets of the received address and when the determined operating system matches at least one of the stored operating systems. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100.

Independent claim 19 is directed to a system for detecting a wireless access device on a network. *See*, for example, specification at paragraph 006 and Fig. 1. The system includes at least one memory. *See*, for example, specification at paragraphs 029-034; Fig. 1, ref. 1110; and Fig. 2, ref. 2000. The memory includes code that stores one or more organizationally unique identifiers that comprise the first three octets of one or more registered addresses. *See*, for example, specification at paragraphs 038, 051, and 052; and Fig. 1, ref. 1100. The memory includes code that receives from the

network a packet with an address. *See*, for example, specification at paragraphs 027, 035, and 041; and Fig. 1, ref. 1100. The memory includes code that searches the identifiers, wherein a more frequently encountered predetermined percentage of identifiers is searched first. *See*, for example, specification at paragraphs 027, 041, and 057; and Fig. 1, ref. 1100. The memory also includes code that compares the first three octets of the received address with the identifiers. *See*, for example, specification at paragraphs 051 and 052; and Fig. 1, ref. 1100.

The memory also includes code that determines if the received address includes one of the stored identifiers. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100. The memory also includes code that determines an operating system associated with the received address, when comparing the address results in a match between the received address and at least one of the registered addresses. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100. The memory also includes code that compares the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds to the wireless access device. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100. The memory further includes code that indicates that the received packet corresponds to the wireless access device based on the first three octets of the received address and when the determined operating system matches at least one of the stored operating systems. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100. The system includes at least one data processor that executes the code. *See*, for example, specification at paragraphs 029-034; Fig. 1, ref. 1110; and Fig. 2, ref. 2000.

Independent claim 34 is directed to a computer program product, tangibly embodied in a computer-readable storage medium, for detecting a wireless access device on a network. *See*, for example, specification at paragraph 006 and Fig. 1. The computer program product includes code that stores one or more organizationally unique identifiers that comprise the first three octets of one or more registered addresses. *See*, for example, specification at paragraphs 038, 051, and 052; and Fig. 1, ref. 1100. The computer program product includes code that receives from the network a packet with an address. *See*, for example, specification at paragraphs 027, 035, and 041; and Fig. 1, ref. 1100. The computer program product includes code that searches the identifiers, wherein a more frequently encountered predetermined percentage of identifiers is searched first. *See*, for example, specification at paragraphs 027, 041, and 057; and Fig. 1, ref. 1100. The computer program product includes code that compares the first three octets of the received address with the identifiers. *See*, for example, specification at paragraphs 051 and 052; and Fig. 1, ref. 1100.

The computer program product also includes code that determines if the received address includes one of the stored identifiers. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100. The computer program product also includes code that determines an operating system associated with the received address, when comparing the address results in a match between the received address and at least one of the registered addresses. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100. The computer program product also includes code that compares the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds

to the wireless access device. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100. The computer program product also includes code that indicates that the received packet corresponds to the wireless access device based on the first three octets of the received address and when the determined operating system matches at least one of the stored operating systems. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100. The computer program product further includes at least one data processor that executes the code. *See*, for example, specification at paragraphs 029-034; Fig. 1, ref. 1110; and Fig. 2, ref. 2000.

Independent claim 49 is directed to a system including a network and a processor connected to the network. *See*, for example, specification at paragraphs 006, 021, and 025; and Fig. 1, refs. 1200 and 1110. The processor includes a means for storing one or more organizationally unique identifiers that comprise the first three octets of one or more registered addresses. *See*, for example, specification at paragraphs 038, 051, and 052; and Fig. 1, ref. 1110. The processor includes a means for receiving a packet with an address from a wireless access device on the network. *See*, for example, specification at paragraphs 027, 035, and 041; and Fig. 1, ref. 1110. The processor also includes a means for searching the identifiers, wherein a more frequently encountered predetermined percentage of identifiers is searched first. *See*, for example, specification at paragraphs 027, 041, and 057; and Fig. 1, ref. 1110. The processor also includes a means for comparing the first three octets of the received address with the identifiers. *See*, for example, specification at paragraphs 051 and 052; and Fig. 1, ref. 1110.

The processor also includes a means for determining if the received address includes one of the stored identifiers. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1110. The processor also includes a means for determining an operating system associated with the received address, when comparing the received address results in a match between the received address and at least one of the registered addresses. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1110. The processor also includes a means for comparing the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds to the wireless access device. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1110. The processor further includes a means for indicating that the received packet corresponds to the wireless access device based on the first three octets of the received address and when the determined operating system matches at least one of the stored operating systems. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1110.

Independent claim 50 is directed to a system including a network, a first processor interfaced to the network, and a second processor interfaced to the network. *See*, for example, specification at paragraphs 021 and 023-025; and Fig. 1, refs. 1100, 1200, and 1400. The second processor stores one or more organizationally unique identifiers that comprise the first three octets of one or more registered addresses. *See*, for example, specification at paragraphs 038, 051, and 052; and Fig. 1, ref. 1100. The second processor receives a packet with an address from the first processor via the network. *See*, for example, specification at paragraphs 027, 035, and 041; and Fig. 1, ref. 1100. The second processor also searches the identifiers, wherein a more

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frequently encountered predetermined percentage of identifiers is searched first. *See*, for example, specification at paragraphs 027, 041, and 057; and Fig. 1, ref. 1100. The second processor also compares the first three octets of the received address with the identifiers. *See*, for example, specification at paragraphs 051 and 052; and Fig. 1, ref. 1100.

The second processor also determines if the received address includes one of the stored identifiers. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1110. The second processor also determines an operating system associated with the received address, when comparing the received address results in a match between the received address and at least one of the registered addresses. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1110. The second processor also compares the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds to an operating system of the first processor. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1110. The second processor further indicates that the first processor corresponds to a wireless access device based on the first three octets of the received address and when the determined operating system matches at least one of the stored operating systems. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1110.

Independent claim 52 is directed to a computer program product, tangibly embodied in a computer-readable storage medium, for detecting a wireless access device on a network and containing instructions which, when executed on a processor, perform a method. *See*, for example, specification at paragraph 006 and Fig. 1. The

method includes storing one or more organizationally unique identifiers that comprise the first three octets of one or more registered addresses. *See*, for example, specification at paragraphs 038, 051, and 052; and Fig. 1, ref. 1100. The method includes receiving from the network a packet with an address. *See*, for example, specification at paragraphs 027, 035, and 041; and Fig. 1, ref. 1100. The method also includes searching the identifiers, wherein a more frequently encountered predetermined percentage of identifiers is searched first. *See*, for example, specification at paragraphs 027, 041, and 057; and Fig. 1, ref. 1100. The method also includes comparing the first three octets of the received address with the identifiers. *See*, for example, specification at paragraphs 051 and 052; and Fig. 1, ref. 1100.

The method also includes determining if the received address includes one of the stored identifiers. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100. The method also includes determining an operating system associated with the received address, when comparing the received address results in a match between the received address and at least one of the registered addresses. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100. The method also includes comparing the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds to the wireless access device. *See*, for example, specification at paragraphs 027 and 041; and Fig. 1, ref. 1100. The method further includes indicating that the received packet corresponds to the wireless access device based on the first three octets of the received address and when the determined operating system matches at least one of

the stored operating systems. *See*, for example, specification at paragraphs 027 and

041; and Fig. 1, ref. 1100.

VI. Grounds of Rejection

A.   Claims 2-5, 7, 10, 11, 16, 18-22, 24, 27, 28, 33-37, 39, 42, 43, 48-50 and 52 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,124,197 to Ocepek et al. ("*Ocepek*"), in view of U.S. Patent No. 7,295,524 to Gray et al. ("*Gray*"), and further in view of U.S. Patent No. 6,580,712 to Jennings et al. ("*Jennings*");

B.   Claims 6, 23, and 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, *Gray*, and *Jennings*, and further in view of U.S. Patent No. 6,009,423 to Moran ("*Moran*");

C.   Claim 8, 25, and 40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, *Gray*, and *Jennings*, and further in view of U.S. Patent No. 7,174,373 to Lausier ("*Lausier*"); and

D.   Claims 9, 26, and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, *Gray*, *Jennings*, and *Lausier*, and further in view of U.S. Patent Application Publication No. 2003/0101353 to Tarquini et al. ("*Tarquini*").

VII. Argument

A. Claims 2-5, 7, 10, 11, 16, 18-22, 24, 27, 28, 33-37, 39, 42, 43, 48-50 and 52 are not obvious over *Ocepek, Gray,* and *Jennings*

Appellant respectfully traverses the rejection of claims 2-5, 7, 10, 11, 16, 18-22, 24, 27, 28, 33-37, 39, 42, 43, 48-50 and 52 under 35 U.S.C. § 103(a). A *prima facie* case of obviousness has not been established.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. *See* M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007). Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. *See* id. "A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention." M.P.E.P. § 2145. Furthermore, "[t]he mere fact that references <u>can</u> be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" at the time the invention was made. M.P.E.P. § 2143.01(III), internal citation omitted. Moreover, "[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences <u>themselves</u> would have been obvious, but whether the claimed invention <u>as a whole</u> would have been obvious." M.P.E.P. § 2141.02(I), internal citations omitted (emphasis in original). In this application, a *prima facie* case of obviousness has not been established because the Office Action has not clearly articulated a reason why one of ordinary skill would find the claimed combination obvious in view of the cited reference.

In this application, a *prima facie* case of obviousness has not been established because the Examiner has not clearly articulated a reason why one of ordinary skill would find the claimed combination obvious in view of the cited references.

For example, claim 2 recites a method comprising, *inter alia*:

storing one or more organizationally unique identifiers that comprise the first three octets of one or more registered addresses;

. . .

searching the identifiers, wherein <u>a more frequently encountered predetermined percentage of identifiers is searched first</u>;

. . .

comparing the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds <u>to the wireless access device</u>; and

indicating that the received packet corresponds <u>to the wireless access device</u> based on the first three octets of the received address and when the determined operating system matches at least one of the stored operating systems.

(Emphasis added).

Ocepek discloses security device 10 that "passively monitors the data link layer for new client devices 24" (col. 5, lines 14-15). "The source MAC address is dependent upon the operating system and hardware of protected servers 16" (col. 7, lines 43-44).

Any address that may exist in Fig. 6 of *Ocepek* corresponds to the source MAC address that depends on servers 16. Accordingly, any packet indication that may exist in *Ocepek* indicates that the packet is dependent on servers 16, not client devices 24, alleged by the Examiner to correspond to the claimed "wireless access device" (Final Office Action at page 3). Therefore, neither server 16 nor any other component of

Ocepek corresponds to the claimed "wireless access device," as asserted by the Examiner for the reasons below.

Ref. 20 in *Ocepek* is a wireless access point ("WAP") that provides client devices 24 access to network 12. The use of wireless access point 20 to provide client devices 24 access to network 10 does not support a contention that server 16 corresponds to the claimed "wireless access device," at least because one of ordinary skill would recognize that a server is not a "wireless access device." The Examiner states that one of ordinary skill "can look at WAP of Fig. 1 and apply the method to a wireless device" (Final Office Action at page 2). However, as stated above, in *Ocepek*, WAP 20 is merely a wireless access point. WAP 20 of *Ocepek* does not have a corresponding stored "operating system." There is no teaching or suggestion in *Ocepek* of "comparing the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds to the wireless access device," as recited in claim 2.

In addition, *Ocepek* does not teach or suggest the claimed "searching the identifiers, wherein a more frequently encountered predetermined percentage of identifiers is searched first," as further recited in claim 2. Indeed, the Examiner does not rely on *Ocepek* to teach this element.

Gray does not cure any of the deficiencies of *Ocepek*. *Gray* discloses "WLAN air space mapping" (col. 3, lines 8-9). *Gray* does not teach or suggest "searching the identifiers, wherein a more frequently encountered predetermined percentage of identifiers is searched first," as recited in claim 2. Indeed, the Examiner does not rely on *Gray* to teach this element.

Jennings does not cure the deficiencies of *Ocepek* and *Gray*. *Jennings* discloses "the use of a specific or dedicated engine to execute the algorithm" (col. 2, lines 50-51). The Examiner states that the LRU in *Jennings* "stores [a] percentage of total look-ups in the LRU engine, this is predetermined as only the most frequently looked up MAC addresses are stored in the LRU engine" (Final Office Action at page 4). Appellant disagrees with the Examiner's statement for at least two reasons.

First, the LRU scheme in *Jennings* "tunes a look-up database over time so as the most frequently used MAC addresses move to the start of the linked lists" (col. 5, lines 50-52). *Jennings* clearly only discloses moving MAC addresses to the start of the lists. However, the MAC addresses in *Jennings* cannot correspond to the claimed "identifiers" at least because the "identifiers . . . comprise the first three octets of one or more registered addresses." Even assuming that the MAC addresses in *Jennings* correspond to the claimed "registered addresses," which Appellant does not concede, the MAC addresses cannot also correspond to the claimed "identifiers." Therefore, *Jennings* can only search for MAC addresses and does not search for "identifiers that comprise the first three octets of one or more registered addresses," as recited in claim 2.

Second, *Jennings* only discloses moving "the most frequently used MAC addresses . . . to the start of the linked lists" (col. 5, lines 50-52). No "predetermined percentage" is associated with this step. The Examiner states "this is predetermined as only the most frequently looked up MAC addresses are stored in the LRU engine" (Office Action at page 4). Appellant agrees that the most frequently used MAC addresses are moved to the start of the linked lists. However, *Jennings* is silent regarding moving a <u>predetermined percentage</u> of the MAC addresses. Moving

frequently used MAC addresses to the start of a list does not teach or suggest searching "identifiers, wherein a more frequently encountered predetermined percentage of identifiers is searched first," as recited in claim 2.

The Examiner states that *Jennings* discloses "most frequently used MAC addresses are moved to the start of the linked lists" (Final Office Action at page 2). However, as stated above, claim 2 requires searching first for a "more frequently encountered predetermined percentage of identifiers." The claimed identifiers are not MAC addresses. Moreover, the Examiner continues to incorrectly assert that "entries at the beginning of the list" correspond to a "predetermined percentage of identifiers" (Final Office Action at page 2). As previously stated, *Jennings* does not teach or suggest moving a "predetermined percentage of identifiers." On the contrary, *Jennings* merely moves frequently used MAC addresses regardless of any "predetermined percentage" considerations.

Accordingly, combinations of *Ocepek*, *Gray*, and *Jennings* do not teach or suggest the elements of claim 2. Moreover, there is no teaching or suggestion that would lead one of ordinary skill in the art to modify the apparatus of *Ocepek*, *Gray*, and *Jennings* to achieve the combination of claim 2. Thus, as outlined above, the Office Action has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the cited references and the claimed invention. Therefore, no reason has been clearly articulated as to why the claim would have been obvious to one of ordinary skill in view of the cited references and a *prima facie* case of obviousness has not been established with respect to claim 2.

Thus, claim 2 is allowable for at least these reasons, and claims 3-5, 7, 10, 11 and 16 are also allowable at least due to their dependence from claim 2.

Independent claims 18, 19, 34, 49, 50, 52, while of different scope, recite features similar to those of claim 2 and are thus allowable over *Ocepek*, *Gray*, and *Jennings* for at least reasons similar to those discussed above in regard to claim 2. Moreover, claims 20-22, 24, 27, 28, 33, 35-37, 39, 42, 43, and 48 are also allowable at least due to their dependence from one of claims 19 and 34.

B. Claims 6, 23, and 38 are not obvious over *Ocepek*, *Gray*, *Jennings*, and *Moran*

Regarding the rejection of claims 6, 23, and 38, which depend from independent claims 2, 19, and 34, the Examiner relies on *Moran* for allegedly disclosing "comparing based on determination of whether a portion of the address is similar to a portion of at least one of the registered addresses" (Final Office Action at page 17). Even assuming this allegation is correct, which Appellant does not concede, *Moran* fails to cure the deficiencies of *Ocepek*, *Gray*, and *Jennings* with respect to the independent claims.

Therefore, a *prima facie* case of obviousness has not been established for claims 6, 23, and 38 and the Examiner should withdraw the rejection of the claims under 35 U.S.C. § 103(a).

C. Claims 8, 25, and 40 are not obvious over *Ocepek*, *Gray*, *Jennings*, and *Lausier*

Regarding the rejection of claims 8, 25, and 40, which depend from independent claims 2, 19, and 34, the Examiner relies on *Lausier* for allegedly disclosing "determining the operating system at the IP address associated with the address" (Final Office Action at page 18). Even assuming this allegation is true, which Appellant does

not concede, *Lausier* fails to cure the deficiencies of *Ocepek*, *Gray*, and *Jennings* with respect to the independent claims.

Therefore, a *prima facie* case of obviousness has not been established for claims 8, 25, and 40 and the Examiner should withdraw the rejection of the claims under 35 U.S.C. § 103(a).

D. **Claims 9, 26, and 41 are not obvious over *Ocepek*, *Gray*, *Jennings*, and *Tarquini***

Regarding the rejection of claims 9, 26, and 41, which depend from independent claims 2, 19, and 34, the Examiner relies on *Tarquini* for allegedly disclosing "determining the operating system using an nmap" (Final Office Action at page 18). Even assuming this allegation is true, which Appellant does not concede, *Tarquini* fails to cure the deficiencies of *Ocepek*, *Gray*, *Jennings*, and *Lausier* with respect to the independent claims.

Therefore, a *prima facie* case of obviousness has not been established for claims 9, 26, and 41 and the Examiner should withdraw the rejection of the claims under 35 U.S.C. § 103(a).

CONCLUSION

For at least the reasons given above, pending claims 2-11, 16, 18-28, 33-43, 48-50, and 52 are allowable over the applied references. Therefore, Appellant respectfully requests the Board to reverse the Examiner's rejections of claims 2-11, 16, 18-28, 33-43, 48-50, and 52.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are

any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith,

including any fees required for an extension of time under 37 C.F.R. § 1.136, please

charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 3, 2010   By: _____

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VIII. Claims Appendix to Appeal Brief Under Rule 41.37(c)(1)(viii)

2. A method for detecting a wireless access device on a network, the method comprising:

storing one or more organizationally unique identifiers that comprise the first three octets of one or more registered addresses;

receiving from the network a packet with an address;

searching the identifiers, wherein a more frequently encountered predetermined percentage of identifiers is searched first;

comparing the first three octets of the received address with the identifiers;

determining if the received address includes one of the stored identifiers;

determining an operating system associated with the received address, when comparing the received address results in a match between the received address and at least one of the registered addresses;

comparing the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds to the wireless access device; and

indicating that the received packet corresponds to the wireless access device based on the first three octets of the received address and when the determined operating system matches at least one of the stored operating systems.

3. The method of claim 2, wherein said receiving further comprises: receiving the address with information identifying a source of the packet.

4. The method of claim 3, further comprising:

using an organizationally unique identifier as the information identifying the source.

5. The method of claim 2, wherein said receiving further comprises:

receiving the address based on passively monitoring the network.

6. The method of claim 2, wherein comparing the address further comprises:

determining whether a portion of the address is similar to a portion of at least one of the registered addresses.

7. The method of claim 2, wherein comparing the address further comprises:

determining whether a first organizationally unique identifier of the address is similar to a second organizationally unique identifier of at least one of the registered addresses.

8. The method of claim 2, wherein determining the operating system further comprises:

determining the operating system at the Internet Protocol address associated with the address.

9. The method of claim 8, wherein determining the operating system further comprises:

determining the operating system using an nmap.

10. The method of claim 2, wherein said indicating further comprises:

indicating the wireless access device is not authorized on the network.

11. The method of claim 2, further comprising:

storing the one or more registered addresses, such that the one or more registered addresses are searchable.

16. The method of claim 2, further comprising:

storing the stored operating systems, such that a more frequently encountered stored operating system is searched before a less frequently encountered stored operating system.

18. A system for detecting a wireless access device on a network, the system comprising:

means for storing one or more organizationally unique identifiers that comprise the first three octets of one or more registered addresses;

means for receiving from the network a packet with an address;

means for searching the identifiers, wherein a more frequently encountered predetermined percentage of identifiers is searched first;

means for comparing the first three octets of the received address with the identifiers;

means for determining if the received address includes one of the stored identifiers;

means for determining an operating system associated with the received address, when comparing the received address results in a match between the received address and at least one of the registered addresses;

means for comparing the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds to the wireless access device; and

means for indicating that the received packet corresponds to the wireless access device based on the first three octets of the received address and when the determined operating system matches at least one of the stored operating systems.

19. A system for detecting a wireless access device on a network, the system comprising:

at least one memory comprising:

code that stores one or more organizationally unique identifiers that comprise the first three octets of one or more registered addresses;

code that receives from the network a packet with an address;

code that searches the identifiers, wherein a more frequently encountered predetermined percentage of identifiers is searched first;

code that compares the first three octets of the received address with the identifiers;

code that determines if the received address includes one of the stored identifiers;

code that determines an operating system associated with the received address, when comparing the address results in a match between the received address and at least one of the registered addresses;

code that compares the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds to the wireless access device; and

code that indicates that the received packet corresponds to the wireless access device based on the first three octets of the received address and when the determined operating system matches at least one of the stored operating systems; and

at least one data processor that executes the code.

20. The system of claim 19, wherein said code that receives further comprises:

code that receives the address with information identifying a source of the packet.

21. The system of claim 20, further comprising:

code that uses an organizationally unique identifier as the information identifying the source.

22. The system of claim 19, wherein said code that receives further comprises:

code that receives the address based on passively monitoring the network.

23. The system of claim 19, wherein code that compares the address further comprises:

code that determines whether a portion of the address is similar to a portion of at least one of the registered addresses.

24. The system of claim 19, wherein said code that compares the address further comprises:

code that determines whether a first organizationally unique identifier of the address is similar to a second organizationally unique identifier of at least one the registered addresses.

25. The system of claim 19, wherein said code that determines the operating system further comprises:

code that determines the operating system at the Internet Protocol address associated with the address.

26. The system of claim 25, wherein said code that determines the operating system further comprises:

code that determining the operating system using an nmap.

27. The system of claim 19, wherein said code that indicates further comprises:

code that indicates the wireless access device is not authorized on the network.

28. The system of claim 19, further comprising:

code that stores the one or more registered addresses, such that the one or more registered addresses are searchable.

33. The system of claim 19, further comprising:

code that stores the stored operating systems, such that a more frequently encountered stored operating system is searched before a less frequently encountered stored operating system.

34. A computer program product, tangibly embodied in a computer-readable storage medium, for detecting a wireless access device on a network, the computer program product comprising:

code that stores one or more organizationally unique identifiers that comprise the first three octets of one or more registered addresses;

code that receives from the network a packet with an address;

code that searches the identifiers, wherein a more frequently encountered predetermined percentage of identifiers is searched first;

code that compares the first three octets of the received address with the identifiers;

code that determines if the received address includes one of the stored identifiers;

code that determines an operating system associated with the received address, when comparing the address results in a match between the received address and at least one of the registered addresses;

code that compares the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds to the wireless access device; and

code that indicates that the received packet corresponds to the wireless access device based on the first three octets of the received address and when the determined operating system matches at least one of the stored operating systems; and

at least one data processor that executes the code.

35. The computer program product of claim 34, wherein said code that receives further comprises:

code that receives the address with information identifying a source of the packet.

36. The computer program product of claim 35, further comprising: code that uses an organizationally unique identifier as the information identifying the source.

37. The computer program product of claim 34, wherein said code that receives further comprises:

code that receives the address based on passively monitoring the network.

38. The computer program product of claim 34, wherein code that compares the address further comprises:

code that determines whether a portion of the address is similar to a portion of at least one of the registered addresses.

39. The computer program product of claim 34, wherein said code that compares the address further comprises:

code that determines whether a first organizationally unique identifier of the address is similar to a second organizationally unique identifier of at least one of the registered addresses.

40. The computer program product of claim 34, wherein said code that determines the operating system further comprises:

code that determines the operating system at the Internet Protocol address associated with the address.

41. The computer program product of claim 34, wherein said code that determines the operating system further comprises:

code that determines the operating system using an nmap.

42. The computer program product of claim 34, wherein said code that indicates further comprises:

code that indicates the wireless access device is not authorized on the network.

43. The computer program product of claim 34, further comprising:

code that stores the one or more registered addresses, such that the one or more registered addresses are searchable.

48. The computer program product of claim 34, further comprising:

code that stores the stored operating systems, such that a more frequently encountered stored operating system is searched before a less frequently encountered stored operating system.

49. A system comprising:

a network; and

a processor connected to the network, the processor comprising:

means for storing one or more organizationally unique identifiers that comprise the first three octets of one or more registered addresses;

means for receiving a packet with an address from a wireless access device on the network;

means for searching the identifiers, wherein a more frequently encountered predetermined percentage of identifiers is searched first;

means for comparing the first three octets of the received address with the identifiers;

means for determining if the received address includes one of the stored identifiers;

means for determining an operating system associated with the received address, when comparing the received address results in a match between the received address and at least one of the registered addresses;

means for comparing the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds to the wireless access device; and

means for indicating that the received packet corresponds to the wireless access device based on the first three octets of the received address and when the determined operating system matches at least one of the stored operating systems.

50. A system comprising:

a network;

a first processor interfaced to the network; and

a second processor interfaced to the network, wherein the second processor:

stores one or more organizationally unique identifiers that comprise the first three octets of one or more registered addresses;

receives a packet with an address from the first processor via the network;

searches the identifiers, wherein a more frequently encountered predetermined percentage of identifiers is searched first;

compares the first three octets of the received address with the identifiers;

determines if the received address includes one of the stored identifiers;

determines an operating system associated with the received address, when comparing the received address results in a match between the received address and at least one of the registered addresses;

compares the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds to an operating system of the first processor; and

indicates that the first processor corresponds to a wireless access device based on the first three octets of the received address and when the determined operating system matches at least one of the stored operating systems.

52. A computer program product, tangibly embodied in a computer-readable storage medium, for detecting a wireless access device on a network and containing instructions which, when executed on a processor, perform a method comprising:

storing one or more organizationally unique identifiers that comprise the first three octets of one or more registered addresses;

receiving from the network a packet with an address;

searching the identifiers, wherein a more frequently encountered predetermined percentage of identifiers is searched first;

comparing the first three octets of the received address with the identifiers;

determining if the received address includes one of the stored identifiers;

determining an operating system associated with the received address, when comparing the received address results in a match between the received address and at least one of the registered addresses;

comparing the determined operating system with one or more stored operating systems, such that at least one of the stored operating systems corresponds to the wireless access device; and

indicating that the received packet corresponds to the wireless access device based on the first three octets of the received address and when the determined operating system matches at least one of the stored operating systems.

IX. Evidence Appendix to Appeal Brief Under Rule 41.37(c)(1)(ix)

None.

X. Related Proceedings Appendix to Appeal Brief Under Rule 41.37(c)(1)(x)

None.